



NEWS

Judicial Council of California
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Release Date: September 26, 2003

Release Number: S.C. 40/03

SUMMARY OF CASES ACCEPTED DURING THE WEEK OF SEPTEMBER 22, 2003

[This news release is issued to inform the public and the press of cases that the Supreme Court has accepted and of their general subject matter. The description or descriptions set out below do not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.]

#03-120 Boghos v. Certain Underwriters at Lloyd's, S117735. (H024481; 109 Cal.App.4th 1728; Santa Clara County Superior Court; CV803331.) Petition for review after the Court of Appeal affirmed an order denying a petition to compel arbitration. This case includes the following issues: (1) Did the "service-of-suit" clause in a disability insurance policy, under which the insurer consented to submit to "the jurisdiction of a court of competent jurisdiction" on any claim of failure to pay benefits due under the policy, authorize the insured to bring a court action based upon the insurer's failure to pay benefits allegedly due under the policy and support the trial court's denial of the insurer's motion to compel arbitration under a general arbitration clause in the same insurance policy? (2) Do the requirements for arbitration of claims of employment discrimination established in Armendariz v. Foundation Health Psychcare Services, Inc. (2000) 24 Cal.4th 83 and Little v. Auto Stiegler, Inc. (2003) 29 Cal.4th 1064, including restrictions on imposing arbitration costs on a party pursuant to an adhesion contract, apply to the arbitration of a claim under an arbitration clause contained in a disability insurance policy?

#03-121 People v. Briceno, S117641. (G029525, G029607; 109 Cal.App.4th 1330, mod. 110 Cal.App.4th 1114c; Orange County Superior Court; 00NF3394.) Petition

(over)

for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of criminal offenses. This case presents the following issue:

Does a felony, which is not otherwise identified in Penal Code section 1192.7, subdivision (c), as a serious felony, nonetheless come within that section (and thus qualify as a strike under the three strikes law) whenever there is a finding that the felony was committed for the benefit of criminal street gang (see § 186.22, subd. (b)), because the offense is then “any felony offense, which would also constitute a felony violation of Section 186.22” within the meaning of section 1192.7, subdivision (c)(28), or does the quoted language of section 1192.7, subdivision (c)(28), refer only to a gang-related offense that is defined as a substantive felony offense by section 186.22, subdivision (a)?

#03-122 People v. Martinez, S118180. (F039200; 110 Cal.App.4th 353; Merced County Superior Court; 25556.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. This case presents the following issue: May the Department of Toxic Substance Control, which incurred expenses in cleaning up the site where defendant attempted to manufacture methamphetamine, properly be considered a “direct victim” of the offense as to which the trial court can require defendant to pay restitution under Penal Code section 1202.4, or do the procedures set forth in Health and Safety Code section 11470.2 provide the exclusive means for obtaining recovery of such expenses from a defendant in a criminal proceeding?

#03-123 People v. Yartz, S117964. (C035317; 109 Cal.App.4th 1660; San Joaquin County Superior Court; 12248C.) Petition for review after the Court of Appeal reversed an order of commitment as a sexually violent predator. This case presents the following issue: Can a conviction based on a “no contest” plea prior to the 1982 amendments to Penal Code section 1016 (stats. 1982, ch. 390, § 3) be used as a predicate prior conviction in a proceeding under the Sexually Violent Predator Act, or is such use barred by the language of section 1016 in effect at the time the no contest plea was entered, which provided that such a plea “may not be used against the defendant as an admission in any civil suit based upon or growing out of the act upon which the criminal prosecution is based”?

DISPOSITIONS

The following cases were transferred to the Court of Appeal for reconsideration in light of American Ins. Assn. v. Garamendi (2003) __ U.S. __ [123 S.Ct. 2374, 156 L.Ed.2d 376]:

#03-63 Mitsubishi Materials Corp. v. Superior Court, S114470.

#03-64 Taiheiyo Cement Corp. v. Superior Court, S113759.

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